



# STATE OF IOWA

CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF HUMAN SERVICES  
KEVIN W. CONCANNON, DIRECTOR

January 26, 2007

## GENERAL LETTER NO. 1-E-16

ISSUED BY: Bureau of Financial and Work Supports  
Division of Financial, Health and Work Supports

SUBJECT: Employees' Manual, Title 1, Chapter E, *APPEALS AND HEARINGS*, pages 2, 4e, 5, 7, 8, 9, 11, 12, 21, and 22, revised.

### Summary

This chapter is revised to:

- ◆ Remove references to suspension of benefits. Under prospective budgeting, suspension policies no longer apply for FIP. Suspension policies have already been eliminated for the other programs.
- ◆ Incorporate references to the form 470-4387, 470-4387(M), or 470-4387(S), *Combined PAER/FAIR*. The *Combined PAER/FAIR* will be issued in months when the family would otherwise be required to complete both a PAER for FIP and a FAIR for Food Assistance.
- ◆ Update organizational names and form numbers.

### Effective Date

January 1, 2007

### Material Superseded

Remove the following pages from Employees' Manual, Title 1, Chapter E, and destroy them:

| <u>Page</u> | <u>Date</u>      |
|-------------|------------------|
| 2           | October 28, 2005 |
| 4e, 5, 7-9  | December 2, 2003 |
| 11, 12      | October 28, 2005 |
| 21, 22      | December 2, 2003 |

### Additional Information

Refer questions about this general letter to your area income maintenance administrator.

## OVERVIEW

### Legal Basis

Revised January 26, 2007

Iowa Department of Human Services  
**Title 1** General Departmental Procedures  
**Chapter E** Appeals and Hearings

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Iowa's authorizing legislation is found at Iowa Code Chapter 17A. The Department has promulgated rules on appeals and hearings at 441 Iowa Administrative Code Chapter 7.

### Definitions

**Legal reference:** 441 IAC 7.1(217)

**“Administrative hearing”** means a type of hearing that an appellant may elect in which the presiding officer reviews the written record only and makes a decision based on the facts available within the appeal file. An administrative hearing does not require an in-person or teleconference hearing. The Appeals Section or the presiding officer makes the final determination to establish whether an administrative hearing may be held.

**“Administrative law judge”** means an employee of the Department of Inspections and Appeals who conducts appeal hearings.

**“Aggrieved person”** means a person against whom the Department has taken an adverse action. This includes a person who meets any of the following conditions:

- ◆ For **financial assistance** (including the Family Investment Program, Refugee Cash Assistance, Child Care Assistance, Diversion, Emergency Assistance, Family or Community Self-Sufficiency Grants, Family Investment Program hardship exemptions, and State Supplementary Assistance dependent person, in-home health related care, and residential care facility benefits), a person:
  - Whose request to be given an application was denied;
  - Whose application for assistance has been denied or has not been acted on in a timely manner;
  - Who contests the effective date of assistance;
  - Who contests the amount of benefits granted;
  - Who has been notified of a reduction or cancellation of assistance; or
  - Who has been notified that an overpayment of benefits has been established and repayment is requested.

**“Presiding officer”** means an administrative law judge employed by the Department of Inspections and Appeals. The presiding officer may also be the Department’s director or the director’s designee. The presiding officer has the authority to conduct appeal hearings and render proposed and final decisions.

**“Presumption”** denotes an inference as to the existence of a fact not known or drawn from facts that are known.

**“PROMISE JOBS discrimination complaint”** means any written complaint by a PROMISE JOBS participant or the participant’s representative which alleges that an adverse action was taken against the participant on the basis of race, creed, color, sex, national origin, religion, age, physical or mental disability, or political belief.

**“PROMISE JOBS displacement grievance”** means any written complaint filed with a PROMISE JOBS contractee by regular employees or their representatives which alleges that the work assignment of an individual under the PROMISE JOBS program violates any of the prohibitions against displacement of regular workers.

**“Reconsideration”** means a review process that must be exhausted before an appeal hearing is granted. This includes, but is not limited to, a reconsideration request through:

- ◆ The Iowa Foundation for Medical Care.
- ◆ Magellan Behavioral Health Care.
- ◆ A health maintenance organization.
- ◆ A prepaid health plan.
- ◆ Medicaid patient management services.
- ◆ The Managed Health Care Review Committee.
- ◆ A division or bureau within the Department.
- ◆ The Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission.
- ◆ The child or adult abuse registry.
- ◆ A licensed health professional as specified in 1-C, **Review Process for a Denial of Access Due to Probable Harm**.

Once the reconsideration process is complete, a notice of decision will be issued with appeal rights.

## **THE RIGHT TO APPEAL**

**Legal reference:** 441 IAC 7.5(217), 7 CFR 273.15(a)

Any person or group of persons has the right to appeal any Departmental decision and to request an appeal hearing. No one may limit or interfere with this right. A person or group must never be denied the right to appeal. However, the right to appeal does not guarantee that an appeal hearing will be granted.

The Department determines whether a hearing will be granted. The Department will grant a hearing to any appellant when state or federal law or constitution grants the right to a hearing, except as provided at **Right of the Department to Deny or Dismiss an Appeal**.

The Department must advise each applicant and recipient of the right to appeal any adverse decision affecting the person's status. Examples of adverse action include:

- ◆ Failure to act on the client's application with reasonable promptness.
- ◆ Denial of Food Assistance, financial assistance, Medicaid, or services.
- ◆ Denial of expungement or correction of Child Abuse Registry information.
- ◆ Denial or revocation of a license, certification, approval or accreditation.
- ◆ Determination due to record check evaluation that a person may not be employed.
- ◆ Determination that a person must participate in a service program.
- ◆ Determination to make or continue a protective vendor or two-party payment.
- ◆ Failure to take account of the appellant's choice in assignment to a program.
- ◆ Retention of state or federal income tax refund monies or other state or federal warrants.
- ◆ Reduction or termination of Food Assistance, financial assistance, Medicaid, or services.

The following sections give more information on:

- ◆ Informing persons about their appeal rights.
- ◆ Publicizing hearing procedures.

## **NOTICE OF DECISION**

**Legal reference:** 441 IAC 7.7(1)

Whenever the Department proposes to approve or deny an application for Food Assistance, financial assistance, Medicaid, or services, give **adequate** notice of the action. (See **Adequate Notice** for specific requirements.)

| Whenever the Department proposes to terminate or reduce ongoing Food Assistance, financial assistance, Medicaid, or services, give **timely and adequate** notice of the pending action, except as listed under **Dispensing With Timely Notice**. “Timely” means that the notice is mailed at least ten calendar days before the date the action becomes effective. The timely notice period begins on the day after the notice is mailed.

| Emergency services for Food Assistance benefits may be issued without a notice of decision. However, once action is completed on the application, timely and adequate notice must be issued.

The following sections explain:

- ◆ Requirements for an “adequate” notice.
- ◆ Definition of a timely notice and exceptions to when it is required.
- ◆ Holding a conference during the timely notice period.
- ◆ Actions that do not require a notice of decision.
- ◆ Reinstatement requirements.

### **Adequate Notice**

**Legal reference:** 441 IAC 7.7(1)“b”

“Adequate” means a written notice that includes:

- ◆ The action taken and the reasons for it.
- ◆ The DHS manual chapter number and subheading giving the policy basis for the action.
- ◆ The administrative rule reference.
- ◆ The client’s right to request a fair hearing.
- ◆ When assistance is continued if an appeal is filed, if applicable.
- ◆ The effective date of the intended action, if applicable.

## **NOTICE OF DECISION**

### **Adequate Notice**

Revised January 26, 2007

Iowa Department of Human Services  
**Title 1** General Departmental Procedures  
**Chapter E** Appeals and Hearings

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Every notice the Department issues must be adequate. Failure to issue an adequate notice may invalidate the action appealed. The appeal rights statement is required on all notices of adverse action and must consist of the elements listed above.

Notice is issued to clients to offer them an opportunity to correct the reason for the intended adverse action and to allow sufficient notice to properly prepare a defense for an administrative hearing. Failing to state the reason for the action and the specific manual reference denies the client the information necessary to cure the reason for the intended action or to know about what or how to prepare a defense for an administrative hearing.

Manually prepared notices of decision must meet all of these criteria. Tailor manually prepared notices to match computer-generated notices as closely as possible. A reference to the name of a manual chapter is not sufficient. The reference should include the manual subheading of the action taken. It is not necessary to list the page number.

### **Dispensing With Timely Notice**

**Legal reference:** 441 IAC 7.7(1)“a,” 7.7(2); 7 CFR 273.13(a); 273.12(a)(i)(vii)

You may dispense with timely notice (but you must send adequate notice no later than the date benefits would have been issued) when:

- ◆ The Department approves or denies an application for assistance.
- ◆ There is evidence confirming that a person has died.
- ◆ The Department determines that a Food Assistance household has moved out of Iowa.
- ◆ The person has been admitted or committed to an institution that does not qualify for payment under an assistance program.
- ◆ The person has been placed in a nursing facility or long-term hospitalization.
- ◆ The person’s physician prescribes a change in the level of medical care.
- ◆ Cash assistance or Food Assistance changes because a child is removed from the home through a judicial determination or is voluntarily placed in foster care.
- ◆ The person’s whereabouts are unknown and the post office returned mail directed to the person indicating no known forwarding address. If the person is located within the payment month, reissue any undelivered warrant.

- ◆ The person has been accepted for assistance in a new jurisdiction.
- ◆ The person provides a clear, written, signed statement that the person no longer wants assistance, or has given information that requires termination or reduction of assistance, and has indicated, in writing, that the person understands the consequence of supplying the information.
- ◆ The Department terminates or reduces benefits or makes changes based on a completed report form. This can be:
  - The *Public Assistance Eligibility Report* (PAER), form 470-0454, 470-0455, or 470-3719 (Spanish);
  - The *Combined PAER/FAIR*, form 470-4387, 470-4387(M), or 470-4387(S);
  - The *Review/Recertification Eligibility Document* (RRED), form 470-2881 or 470-0483 or 470-4083(M) (Spanish); or
  - The *Food Assistance Interim Report* (FAIR), form 470-4026, 470-4026(M), or 470-4026(S).
- ◆ The Department terminated benefits for failure to return a completed report form. (This can be form 470-0454, 470-0455, 470-3719, 470-4387, 470-4387(M), 470-4387(S), 470-2881, 470-0483, 470-4083(M), 470-4026, 470-4026 (M) or 470-4026(S).)
- ◆ The Department terminates a special allowance or service granted for a specific predetermined period, and the person was informed in writing at the time of initiation that the allowance or service will terminate at the end of the specified period.

### **Conference During the Timely Notice Period**

**Legal reference:** 441 IAC 7.7(4)

During the timely notice period, the client may have a conference to discuss the Department's proposed action in the *Notice of Decision*. The Department must provide a full explanation of the reasons for the pending action and give the client an opportunity to offer facts to support the contention that the pending action is not warranted.

A representative, legal counsel, friend or other person may accompany the client. This person may represent the client when the client is not able to be present, unless otherwise specified by statute or federal regulation. (See **Representation**.)

Reinstatement of a Food Assistance household can occur before the effective date of cancellation when:

- ◆ The reasons that caused the cancellation no longer exists, and
- ◆ Eligibility can be determined.

FIP assistance **must** be reinstated without a new application when all necessary information is provided before the effective date of cancellation and eligibility can be reestablished.

When eligibility factors are met, FIP assistance must be reinstated when the local office receives the completed review form within ten days of the date a cancellation notice is issued because the form was incomplete or not returned. FIP review forms include:

- ◆ The *Public Assistance Eligibility Report* (PAER), form 470-0454, 470-0455, or 470-3719 (Spanish);
- ◆ The *Combined PAER/FAIR*, form 470-4387, 470-4387(M), or 470-4387(S); and
- ◆ The *Review/Recertification Eligibility Document* (RRED), form 470-2881 or 470-0483 or 470-4083(M) (Spanish).

## **OPPORTUNITY FOR HEARING**

**Legal reference:** 441 IAC 7.8(1), 7 CFR 273.15(h)

An appeal is an expression by the household or its representative that the household wishes to appeal a decision or desires an opportunity to present its case to a higher authority. No one shall limit or interfere with the freedom to request an appeal in any way.

When a person (or the person's authorized representative) expresses in writing dissatisfaction with any decision, action, or failure to act with reference to the case, the Department must determine whether the person wishes to appeal and receive an appeal hearing before an administrative law judge.

A request for a Food Assistance appeal may be expressed verbally or in writing. All other appeal requests must be in writing.



The following sections give more information:

- ◆ Procedures for filing an appeal.
- ◆ The Department's right to deny or dismiss an appeal.
- ◆ Time limits for granting an appeal hearing.
- ◆ Withdrawing an appeal request.

### **Filing an Appeal**

**Legal reference:** 441 IAC 7.8(2), 7 CFR 273.15(h)

Encourage the appellant to make a written appeal on form 470-0487, *Appeal and Request for Hearing*. Provide any instructions or assistance required in completing the form. However, use of this form is not required. If the appellant submits the written appeal on another paper, attach it to the appeal form.

The fact that an appellant is unwilling to complete or sign the appeal form does not preclude the right to file an appeal, as long as the appeal is in writing and has been communicated to the Department by the appellant or appellant's representative.

**Exception:** Food Assistance households may verbally request an appeal. If a client verbally requests a Food Assistance appeal, complete the form on behalf of the client.

The office where the appeal is received must document the receipt date of all appeals. Document the filing date by saving the envelope with the postmark and date-stamping the date received at any Department office. Attach the envelope to the appeal form and submit it to the DHS Appeals Section **within 24 hours of receipt**.

A written appeal is considered filed on the date postmarked on the envelope that is sent to the Department. When the postmarked envelope is not available, a written appeal is filed on the date the appeal is date-stamped received by the Department.

### **Registration and Acknowledgment of Appeal**

**Legal reference:** 441 IAC 7.10(1) and (2)

Upon receipt of an appeal, the DHS Appeals Section registers the appeal and sends an acknowledgment of receipt of the appeal to the appellant, representative, and all parties to the appeal, including the appropriate Department offices.

### **Coordination With Attorney General's Office**

In some situations, primarily child abuse and service appeals, an Assistant Attorney General will be assigned to act as the Department's attorney. In these situations, the acknowledgment letter will indicate in the carbon copy section that the Attorney General's Office is involved. The Department worker is responsible for contacting the attorney and coordinating information for the appeal summary.

### **Continuation of Assistance Pending Final Appeal Decision**

**Legal reference:** 441 IAC 7.9(1); 7 CFR 273.13(a)(1), 273.15(k)(1) and 273.15(k)(2)

Assistance shall not be reduced, restricted, discontinued, or terminated, nor shall a license or registration be revoked, or other proposed adverse action be taken pending a final decision on an appeal when:

- ◆ The appellant files an appeal within the timely notice period.
- ◆ The appellant files an appeal within ten days from the date adequate notice is issued for termination, reduction, or suspension of services, Food Assistance, Family Investment Program or Medicaid based on the completed monthly report.

If adequate notice is required, benefits may be continued if the appeal is filed within ten days of the date of the notice. When timely and adequate notice is required, benefits may be continued if the appeal is filed before the effective date of the notice.

Benefits continue if an appeal is based on a notice of cancellation only when a completed FAIR, PAER, *Combined PAER/FAIR*, or RRED has been submitted. If the notice period ends on a weekend or holiday, and the appellant files the day after the weekend or holiday, the request shall be considered to have been timely received. Benefits will continue.

To determine continuation of benefits, the date the appeal is filed is the date of the postmark or the date of receipt of the appeal, whichever is earlier.

If benefits are continued pending a final decision on the appeal, then the factor appealed must be held constant. During the appeal process, if a change is reported, act on that change, and issue a new notice of decision, if applicable.

Form 470-0487, *Appeal and Request for Hearing*, contains space for the appellant to request continued benefits or not. If the form does not positively indicate that the household has waived continuation of benefits, assume that continuation of benefits is desired and act accordingly.

**When Assistance Does Not Continue**

**Legal reference:** 441 IAC 7.9(2)

The adverse action appealed to reduce, restrict, discontinue, or terminate assistance, revoke a license or registration, or take other proposed action may be implemented pending a final decision on appeal when:

- ◆ An appeal is not filed within the timely notice period.
- ◆ The appellant does not request a hearing within ten days from the date adequate notice is issued based on the completed monthly report.
- ◆ A Food Assistance certification ends.
- ◆ A medically needy certification period ends.
- ◆ The appellant directs the worker in writing to proceed with the intended action.
- ◆ Medicaid benefits under a prior authorization are appealed and the prior authorization ends.

Do not reinstate benefits when an adequate (not timely) notice is appealed eleven or more days after the issuance date of the notice, or when an adequate and timely notice is appealed after the effective date of the notice.

Do not reinstate benefits when a *Notice of Cancellation* is appealed, or when an appeal is filed eleven or more days after the date of a *Notice of Decision* issued based on information reported on the completed FAIR, PAER, *Combined PAER/FAIR*, or RRED.

Do not reinstate or continue benefits when a certification period ends.